

(e) No delegation in this part to lower organizational levels will preclude the Chief, or designee, from determining any issues arising under this part or from reversing or modifying any determination made under this part.

§ 636.3 Definitions.

The following definitions will apply to this part, and all documents issued in accordance with this part, unless specified otherwise:

Agricultural lands means cropland, grassland, rangeland, pastureland, and other land determined by NRCS to be suitable for fish and wildlife habitat development on which agricultural and forest-related products or livestock are or have the potential to be produced. Agricultural lands may include cropped woodland, wetlands, waterways, streams, incidental areas included in the agricultural operation, and other types of land used for or have the potential to be used for production.

Applicant means a person, legal entity, joint operation, or Indian tribe that has an interest in agricultural land, NIPF, Indian land, or other lands identified in 636.4(c)4, who has requested in writing to participate in WHIP.

At-risk species means any plant or animal species listed as threatened or endangered; proposed or candidate for listing under the Endangered Species Act (ESA); a species listed as threatened or endangered under State law or tribal law on tribal land; State or tribal land species of conservation concern; or other plant or animal species or community, as determined by the State Conservationist, with advice from the State Technical Committee and Tribal Conservation Advisory Council (for tribal land), that has undergone, or likely to undergo, population decline and may become imperiled without direct intervention.

Beginning farmer or rancher means an individual or entity who:

(1) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years. This requirement applies to all members of an entity, who will materially and substantially participate in the operation of the farm or ranch.

(2) In the case of a cost-share agreement with an individual, individually, or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch consistent with the practices in the county or State where the farm is located.

(3) In the case of a cost-share agreement with an entity or joint operation, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

Chief means the Chief of NRCS or designee.

Conservation activities means conservation systems, practices, or management measures needed to address a resource concern or improve environmental quality through the treatment of natural resources, and includes structural, vegetative, and management activities, as determined by NRCS.

Conservation district means any district or unit of State, tribal, or local government formed under State, tribal, or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a conservation district, soil conservation district, soil and water conservation district, resource conservation district, natural resource district, land conservation committee, or similar name.

Conservation practice means one or more conservation improvements and activities, including structural practices, land management practices, vegetative practices, forest management, and other improvements that benefit the eligible land and achieve program purposes. Approved conservation practices are listed in the NRCS Field Office Technical Guide (FOTG).

Cost-share agreement means a financial assistance document that specifies

the rights and obligations of any participant accepted into the program. A WHIP cost-share agreement is a binding agreement for the transfer of assistance from the Department of Agriculture (USDA) to the participant to share in the costs of applying conservation activities.

Cost-share payment means the payments under the WHIP cost-share agreement to develop fish and wildlife habitat or accomplish other goals consistent with the program provided for in this part.

Designated conservationist means an NRCS employee whom the State Conservationist has designated as responsible for WHIP administration in a specific area.

Field Office Technical Guide means the official local NRCS source of resource information and interpretations of guidelines, criteria, and requirements for planning and applying conservation practices and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Habitat development means the conservation activities implemented to establish, improve, protect, enhance, or restore the conditions of the land for the specific purpose of improving conditions for fish and wildlife.

Historically underserved producer means an eligible person, joint operation, legal entity, or Indian tribe who is a beginning farmer or rancher, socially disadvantaged farmer or rancher, limited resource farmer or rancher, or NIPF landowner who meets the beginning, socially disadvantaged, or limited resource qualifications set forth in § 636.3.

Indian land means:

- (1) Land held in trust by the United States for individual Indians or Indian tribes, or
- (2) Land, the title to which is held by individual Indians or Indian tribes subject to Federal restrictions against alienation or encumbrance, or
- (3) Land which is subject to rights of use, occupancy, and benefit of certain Indian tribes, or
- (4) Land held in fee title by an Indian, Indian family, or Indian tribe.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) that is eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Joint operation means, as defined in 7 CFR part 1400, a general partnership, joint venture, or other similar business organization in which the members are jointly and severally liable for the obligations of the organization.

Legal entity means, as defined in 7 CFR part 1400, an entity created under Federal or State law that:

- (1) Owns land or an agricultural commodity, product, or livestock; or
- (2) Produces an agricultural commodity, product, or livestock.

Lifespan means the period of time during which a conservation practice is to be operated and maintained for the intended purpose.

Limited resource farmer or rancher means:

- (1) A person with direct or indirect gross farm sales of not more than \$142,000 in each of the previous 2 years (this is the amount for 2010, and adjusted for inflation using Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service); and
- (2) Has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous 2 years (to be determined annually using the Department of Commerce Data).

Liquidated damages means a sum of money stipulated in the WHIP cost-share agreement that the participant agrees to pay NRCS if the participant fails to adequately complete the terms of the cost-share agreement. The sum represents an estimate of the technical assistance expenses incurred to service the agreement, and reflects the difficulties of proof of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

Livestock means all animals produced on farms and ranches, as determined by the Chief.

Natural Resources Conservation Service is an agency of USDA, which has the responsibility for administering WHIP using the funds, facilities, and authorities of the CCC.

Nonindustrial private forest land means rural land, as determined by the Secretary, that has existing tree cover or is suitable for growing trees and is owned by any nonindustrial private individual, group, association, corporation, Indian tribe, or other private legal entity that has definitive decisionmaking authority over the land.

Operation and maintenance means work performed by the participant to keep the applied conservation activities functioning for the intended purpose during the conservation practice lifespan. Operation includes the administration, management, and performance of non-maintenance actions needed to keep the completed activity functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

Operation and maintenance agreement means the document that, in conjunction with the WHIP plan of operations, specifies the operation and maintenance (O&M) responsibilities of the participants for conservation activities implemented with WHIP assistance.

Participant means a person, legal entity, joint operation, or Indian tribe that is receiving payment or is responsible for implementing the terms and conditions of a WHIP cost-share agreement.

Person means, as defined in 7 CFR part 1400, an individual, natural person and does not include a legal entity.

Producer means, as defined in 7 CFR part 1400, a person, legal entity, joint operation, or Indian tribe who has an interest in the agricultural operation or who is engaged in agricultural production or forestry management.

Resource concern means a specific natural resource problem that represents a significant concern in a State or region, and is likely to be addressed successfully through the implementa-

tion of the conservation activities by participants.

Secretary means the Secretary of USDA.

Socially disadvantaged farmer or rancher means a farmer or rancher who has been subjected to racial or ethnic prejudices because of their identity as a member of a group without regard to their individual qualities. Those groups include African Americans, American Indians or Alaskan Natives, Hispanics, and Asians or Pacific Islanders.

State Conservationist means the NRCS employee authorized to implement WHIP and direct and supervise NRCS activities in a State, Caribbean Area, or the Pacific Islands Area.

State Technical Committee means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861.

Technical assistance means technical expertise, information, and tools necessary for the conservation of natural resources on land active in agricultural, forestry, or related uses. The term includes the following:

(1) Technical services provided directly to farmers, ranchers, and other eligible entities, such as conservation planning, technical consultation, and assistance with design and implementation of conservation practices; and

(2) Technical infrastructure, including activities, processes, tools, and agency functions needed to support delivery of technical services, such as technical standards, resource inventories, training, data, technology, monitoring, and effects analyses.

Technical service provider means an individual, entity, Indian tribe, or public agency either:

(1) Certified by NRCS and placed on the approved list to provide technical services to participants; or

(2) Selected by the Department to assist the Department in the implementation of conservation programs covered by this part through a procurement contract, contribution agreement, or cooperative agreement with the Department.

Tribal Conservation Advisory Council means a committee established by a State Conservationist to implement consultation as defined in General Manual 410 Part 405.

WHIP plan of operations means the document that identifies the location and timing of conservation activities that the participant agrees to implement on eligible land in order to develop fish and wildlife habitat and provide environmental benefits. The WHIP plan of operations is a part of the WHIP cost-share agreement.

Wildlife means non-domesticated birds, fishes, reptiles, amphibians, invertebrates, and mammals.

Wildlife habitat means the aquatic and terrestrial environments required for fish and wildlife to complete their life cycles, providing air, food, cover, water, and spatial requirements.

§ 636.4 Program requirements.

(a) To participate in WHIP, an applicant must:

(1) Be in compliance with the highly erodible and wetland conservation provisions found in 7 CFR part 12;

(2) Be in compliance with the terms of all other USDA-administered conservation program contracts to which the participant is a party;

(3) Develop and agree to comply with a WHIP plan of operations and O&M agreement, as described in § 636.8;

(4) Enter into a cost-share agreement for the development of fish and wildlife habitat as described in § 636.9;

(5) Provide NRCS with written evidence of ownership or legal control of land for the term of the proposed cost-share agreement, including the O&M agreement. An exception may be made by the Chief in the case of land allotted by the Bureau of Indian Affairs (BIA) or Indian land where there is sufficient assurance of control;

(6) Agree to provide all information to NRCS determined to be necessary to assess the merits of a proposed project and to monitor cost-share agreement compliance;

(7) Agree to grant to NRCS or its representatives access to the land for purposes related to application, assessment, monitoring, enforcement, verification of certifications, or other actions required to implement this part;

(8) Provide a list of all members of the legal entity and embedded entities along with members' tax identification numbers and percentage interest in the

entity. Where applicable, American Indians, Alaska Natives, and Pacific Islanders may use another unique identification number for each individual eligible for payment;

(9) With regard to cost-share agreements with individual Indians or Indians represented by the BIA, payments exceeding the payment limitation may be made to the tribal participant if a BIA or tribal official certifies in writing that no one individual, directly or indirectly, will receive more than the payment limitation. The BIA or tribal entity must also provide annually, a listing of individuals and payments made, by tax identification number or other unique identification number, during the previous year for calculation of overall payment limitations. The tribal entity must also produce, at the request of NRCS, proof of payments made to the person or legal entity that incurred costs related to conservation activity implementation;

(10) Supply information, as required by NRCS, to determine eligibility for the program including, but not limited to, information to verify the applicant's status as a limited resource farmer or rancher or beginning farmer or rancher and payment eligibility as established by 7 CFR part 1400, Adjusted Gross Income (AGI);

(11) With regard to any participant that utilizes a unique identification number as an alternative to a tax identification number, the participant will utilize only that identifier for any and all other WHIP cost-share agreements to which the participant is a party. Violators will be considered to have provided fraudulent representation and are subject to § 636.13; and

(12) Comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282, as amended) and 2 CFR parts 25 and 170.

(b) Eligible land includes:

(1) Private agricultural land;

(2) NIPF;

(3) Indian land; and

(4) Trust land owned in fee title by a State, including an agency or subdivision of a State, when such trust land is held under a long-term lease by a person or nongovernmental entity and